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TRANSMITTAL OF APPEAL BRIEF			Docket No. 29953-184828
In re Application of: James Dunman			
Application No. 10/630982	Filing Date July 31, 2003	Examiner F. J. Parker	Group Art Unit 1762
Invention: METHOD FOR SHIELDING CONTAINERS ON A COATING LINE (AS AMENDED)			
<u>TO THE COMMISSIONER OF PATENTS:</u>			
Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: <u>February 21, 2006</u> .			
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<input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. <u>22-0261</u> . This sheet is submitted in duplicate.			
 _____ Ryan M. Flandro Attorney Reg. No. : 58,094 VENABLE LLP P.O. Box 34385 Washington, DC 20043-9998 (202) 344-4000		Dated: <u>April 21, 2006</u>	



Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2006		Complete if Known	
		Application Number	10/630982
		Filing Date	July 31, 2003
		First Named Inventor	James Duncan
		Examiner Name	Frederick J. Parker
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Art Unit	1762
TOTAL AMOUNT OF PAYMENT		(\$)	500.00
		Attorney Docket No.	29953-184828

METHOD OF PAYMENT (check all that apply)

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

_____ - 20 = _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

_____ - 3 = _____ x _____ = _____

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3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____ / 50 _____ (round up to a whole number) x _____	_____	_____

4. OTHER FEE(S)

	Fees Paid (\$)
Non-English Specification, \$130 fee (no small entity discount)	
Other (e.g., late filing surcharge): <u>1402 Filing a brief in support of an appeal</u>	<u>500.00</u>

SUBMITTED BY			
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		Date	April 21, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

James DUNMAN

Application No.: 10/630,982

Filed: July 31, 2003

For: METHOD FOR SHIELDING
CONTAINERS ON A COATING
LINE (AS AMENDED)

Confirmation No.: 1857

Art Unit: 1762

Examiner: Frederick J. PARKER

Atty. Docket No.: 29953-184828

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APPEAL BRIEF

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Sir:

In response to the Non-Final Office Action dated November 21, 2005, Appellant submits herewith an Appeal Brief in accordance with 37 C.F.R. § 41.37. Pursuant to 37 C.F.R. § 41.20(b)(2), please charge the required fee of \$500 and any additional fees necessary, or credit any refunds, to our deposit account no. 22-0261, referencing our docket no. 29953-184828. The Notice of Appeal and a Pre-Appeal Brief Request for Review were filed on Tuesday, February 21, 2006, in accordance with 37 C.F.R. § 41.31(a)(3). The Notice of Panel Decision from Pre-Appeal Brief Review was mailed on March 17, 2006, listing claims 1-11 and 13-20 as being rejected.

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Application No.: 10/630,982
James DUNMAN

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¹ The Table of Contents is included for reference purposes only and not to limit the issues to be reviewed on appeal.

Application No.: 10/630,982
James DUNMAN

I. REAL PARTY IN INTEREST – 37 C.F.R. § 41.37(c)(1)(i)

The real party in interest is Graham Packaging Company by virtue of assignment from the inventor, James Dunman, recorded June 24, 2004, at Reel 014771, Frame 0686.

**II. STATEMENT OF RELATED APPEALS AND INTERFERENCES – 37 C.F.R. §
41.37(c)(1)(ii)**

There are no other appeals, interferences or judicial proceedings known to the Appellant, Appellant's legal representatives, or the above-noted inventor/assignor, that will directly affect or will be directly affected by or have bearing on the Board's decision in this appeal.

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III. STATUS OF CLAIMS – 37 C.F.R. § 41.37(c)(1)(iii)

Pending claims 1-11 and 13-20 have been twice rejected, and are hereby appealed.

Claim 12 was canceled in the Amendment dated May 23, 2005.

IV. STATUS OF AMENDMENTS – 37 C.F.R. § 41.37(c)(1)(iv)

No responses, other than the Notice of Appeal and Pre-Appeal Brief Request for Review submitted February 21, 2006, have been filed subsequent to the non-final Office Action dated November 21, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER – 37 C.F.R. § 41.37(c)(1)(v)

A. Features of the Invention

The invention provides a method of protecting portions of containers from being coated while other portions of the containers are being coated. The method includes the steps of making containers from a first material; coating the containers with a second material; and prior to coating, covering portions of the containers to remain uncoated with shields of the first material, wherein the shields are made from scraps of the first material produced from the making of the containers.

B. The Independent Claims on Appeal – Claims 1, 13, 15, and 16

The following explanation of the claimed subject matter, with reference to the specification and drawings of the instant application, is by way of example and for explanation only. The invention is not limited to the disclosed embodiments, and certain elements may be found in more than one of the disclosed embodiments.

Claim 1

Claim 1 recites a method of protecting portions (e.g., a finish portion – FIG. 1, ¶ 6) of containers 18 from being coated while other portions of the containers 18 are being coated.

The method includes the steps of:

- making containers 18 from a first material (¶¶ 9-10);
- coating the containers 18 with a second material (¶ 7); and
- prior to coating, covering portions (e.g., a finish portion – FIG. 1, ¶ 6) of the containers 18 to remain uncoated with shields 10 of the first material (¶¶ 9-10), wherein the shields 10 are made from scraps of the first material produced from the making of the containers (¶ 10).

Claim 13

Claim 13 recites a method of protecting portions (e.g., a finish portion – FIG. 1, ¶ 6) of containers 18 from being coated while other portions of the containers 18 are being coated.

The method includes the steps of:

- making containers 18 from a first material (¶¶ 9-10);

- coating the containers 18 with a second material (§ 7); and
- prior to coating, covering portions (e.g., a finish portion – FIG. 1, § 6) of the containers 18 to remain uncoated with shields 10 made from scraps of the first material (§§ 9-10) produced from the making of the containers (§ 10), wherein the shields 10 contact the containers (FIG. 1; § 6), the containers 18 are electrostatically charged to attract the second material (§ 9), and the containers 18 are made from polyethylene terephthalate (§ 9).

Claim 15

Claim 15 recites a method of protecting portions (e.g., a finish portion – FIG. 1, § 6) of containers 18 from being coated while other portions of the containers 18 are being coated. The method includes the steps of:

- making containers 18 from a first material (§§ 9-10);
- coating the containers 18 with a second material (§ 7); and
- prior to coating, covering portions (e.g., a finish portion – FIG. 1, § 6) of the containers 18 to remain uncoated with shields 10 made from scraps of the first material (§§ 9-10) produced from the making of the containers (§ 10), wherein the containers 18 are releasably supported on a conveyor (not shown) during coating and removed from the conveyor after coating (§§ 6-7), the shields 10 are connected to the conveyor during and after the coating (§§ 6-8), and the shields 10 are removably held on the conveyor by a friction fit (§ 8).

Claim 16

Claim 16 recites a method of protecting portions (e.g., a finish portion – FIG. 1, § 6) of containers 18 from being coated while other portions of the containers 18 are being coated. The method includes the steps of:

- making containers 18 from a first material (§§ 9-10);
- coating the containers 18 with a second material (§ 7); and
- prior to coating, covering portions (e.g., a finish portion – FIG. 1, § 6) of the containers 18 to remain uncoated with shields 10 made from scraps of the first material (§§ 9-10) produced from the making of the containers (§ 10), wherein the

containers 18 are releasably supported on a conveyor (not shown) during coating and removed from the conveyor after coating (§§ 6-7), the shields 10 are connected to the conveyor during and after the coating (§§ 6-8), the conveyor is shut down periodically for maintenance (§ 11, and the shields 10 are removed from the conveyor and disposed of during shutdown (§§ 4, 11).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL – 37 C.F.R. § 41.37(c)(1)(vi)

A. Whether claims 17-20 are unpatentable under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement.

B. Whether claims 1-4, 6, 8-11, 15, and 16 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 3,740,259 to Carl et al. (“Carl”) in view of U.S. Patent No. 4,667,620 to White (“White”).

C. Whether claims 5, 7, 13, and 14 are unpatentable under 35 U.S.C. § 103(a) over Carl in view White, and further in view of the purported Admitted Prior Art.

VII. ARGUMENT – 37 C.F.R. §41.37(c)(1)(vii)

**A. The Rejection of Claims 17-20 Under 35 U.S.C. § 112, First Paragraph
Claims 17-20**

On page 2 of the Office Action dated November 21, 2005, claims 17-20 are rejected under 35 U.S.C. § 112, first paragraph, as being unpatentable for failing to comply with the written description requirement. The Appellant traverses, and hereby appeals, the rejection for at least the following reason.

The Appellant respectfully submits that at least FIG. 1 provides support for the recitation in claims 17-20 that “the shields do not hold a threaded engagement portion of a finish of the containers.” According to the Manual of Patent Examining Procedure (M.P.E.P.), an applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole. M.P.E.P. § 2163(I); *see also, Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1560, 19 U.S.P.Q.2d 1111, 1114 (Fed. Cir. 1991). (“drawings alone may provide a ‘written description’ of an invention as required by Section 112”). In this case, FIG. 1 shows that the lower portion 10b of the shield 10 does not engage or hold the threaded engagement portion of the container 18. Such engagement is unnecessary given that chuck 12 includes a plurality of springs 20, which retain the container 18 releasably, but securely, from the inside (*see* specification, page 3, ¶ 7). Moreover, the only portion of the shield 10 that is disclosed as engaging the container 18 is shoulder 10d, which engages only the top of the container 18 and not the threaded engagement portion thereof (FIG. 1; specification, page 3, ¶ 6).

Accordingly, Appellant respectfully submits that at least FIG. 1 provides support for the recitation in claims 17-20 and that the Examiner has failed to carry his burden of presenting, by a preponderance of the evidence, why a person skilled in the art would not recognize in Appellant’s disclosure a description of the invention defined by claims 17-20. M.P.E.P. § 2163.04. Thus, the Appellant requests that the rejection of claims 17-20 under section 112, first paragraph, be reversed.

Furthermore, because claims 17-20 have not been rejected as being anticipated by or unpatentable over any prior art, Appellant respectfully submits that these claims are allowable. *See* M.P.E.P. § 2163 (III).

B. The Rejection of Claims 1-4, 6, 8-11, 15, and 16 Under 35 U.S.C. § 103(a)²

On pages 3-6 of the Office Action, claims 1-4, 6, 8-11, 15, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,740,259 to Carl et al. (“Carl”) in view of U.S. Patent No. 4,667,620 to White (“White”). The Appellant respectfully traverses the rejections, and hereby appeals the same.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

Claims 1-11

Claim 1, for example, recites:

A method of protecting portions of containers from being coated while other portions of the containers are being coated, comprising:
 making containers from a first material;
 coating the containers with a second material;
and
 prior to coating, covering portions of the containers to remain uncoated with shields of the first material, wherein *the shields are made from scraps of the first material produced from the making of the containers.*

In view of the foregoing guidelines and the applied references, the Appellant respectfully traverses, and hereby appeals, the rejections for at least the following three reasons.

First, the Office Action fails to make a *prima facie* case of obviousness because there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Carl or to combine Carl and White to meet the limitations recited in at least claim 1.

Carl provides a method for masking the closeable area of a container 12 during the

² The rejection set forth on page 3 of the Office Action states that “[c]laims 1-4, 6, 8-12, 15, 16 are rejected . . .” (emphasis added). Claim 12 was, however, canceled by the Amendment submitted May 23, 2005.

coating of the container 12 (*see* column 1, lines 16-19). The main body member 10 is provided with internal opening 11 adapted to receive and support the neck of a container 12 (column 3, lines 1-4). Carl specifically teaches a method for sealingly and concurrently engaging the exterior surfaces of the closure attaching portion of the container (FIG. 1; column 2, lines 20-23). Furthermore, although Carl teaches that the main body member 10 may be fabricated from “conventional materials such as . . . plastic materials such as bakelite, high density polyethylene, phenolic oxidative coupling polymers, and the like,” Carl does not teach or suggest that the main body member 10 (which the Office Action equates to the recited “shield”) is “made from scraps of the first material produced from the making of the containers,” as recited in at least claim 1. The Office Action acknowledges as much at lines 8-11 on page 4.

White, on the other hand, teaches a method and apparatus for making plastic containers 14 or 112 having decreased gas permeability by locating a vaporizing and ionizing source 22 proximate an open end of the container 14 or 112 for depositing a material on the interior surface of the container 14 or 112 (*see* column 2, lines 23-33). A magnet support 34 or 114 encompasses each container 14 or 112, respectively, and “if configured as a shield, prevents the deposit on the exterior of the bottles” (column 4, lines 50-59; *see also* column 3, lines 11-27). The Office Action cites White and states that it would have been obvious to use “a polymeric masking body member of recycled scrap PET from the plastic container making process because White also discloses that PET can be recycled to be re-formed into articles” (Office Action, page 5, lines 7-9), in view of White’s brief discussion of container recycling at column 1, lines 63-68. White’s discussion of such recycling, however, is made in the context of describing the disadvantages of specific dip-coating techniques and that a new method of forming coated containers was needed to help ease recycleability thereof. The Appellant respectfully submits that this brief discussion of recycling in White does not teach why one would be motivated to make shields from scraps of material produced during the making of the containers for coving portions of other containers during coating.

Thus, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Carl, or to combine Carl and White, to meet the limitations recited in at least claim 1.

Second, even assuming, *arguendo*, that the combination of Carl and White is proper,

the combination fails to teach all of the claim limitations. With regard to claim 1, Carl fails to teach shields made from scraps of the first material produced from the making of the containers, for at least the same reasons presented above. White, although purportedly teaching a plastic container with excellent barrier characteristics and ease of recycling without need for removal of dip-coated layers, does not cure this deficiency in Carl. Thus, the combination fails to teach all of the claim limitations, particularly that the shields are made from scraps of the first material produced from the making of the containers as recited in at least claim 1.

Third, the Office Action uses impermissible hindsight reconstruction based on Appellant's disclosure. The Office Action expressly states that "the use of production scrap to make the polymeric masking body would have provided an opportunity to re-form container scrap into a useful product used in container production, resulting in apparent economic benefits" (Office Action, page 5, lines 9-11). The Appellant respectfully submits that neither one of Carl nor White discloses or teaches the use of scraps of a first material produced from the making of the containers to make shields for protecting portions of containers from being coated while other portions of the containers are being coated. The foregoing conclusion only arises in hindsight from reading Appellant's disclosure.

Reversal of the rejection is respectfully requested. Claims 2-11 and 17 depend from claim 1, and are, therefore, submitted as being allowable for at least the same reasons.

Claim 15

Independent claim 15 recites steps similar to the method of claim 1, including the shields being made from scraps of the first material produced from the making of the containers. Accordingly, the Appellant respectfully traverses and appeals the rejection of claim 15 for at least the reasons set forth above with regard to claim 1.

Additionally, with regard to claim 15, Carl fails to teach that "the shields are removably held on the conveyor by a friction fit." The chuck apparatus main body member 10 of Carl, which the Office Action interprets as a shield, is not disclosed as being removably held on a conveyor, let alone by a friction fit. White does not cure this deficiency. Thus, the combination fails to teach all of the claim limitations recited in at least claim 15. Reversal of the rejection is respectfully requested. Claim 19 depends from claim 15 and is submitted as

being allowable for at least the same reasons.

Claim 16

Independent claim 16 recites steps similar to the method of claim 1, including the shields being made from scraps of the first material produced from the making of the containers. Accordingly, the Appellant respectfully traverses and appeals the rejection of claim 16 for at least the reasons set forth above with regard to claim 1.

Furthermore, with regard to claim 16, Carl fails to teach shields removed from the conveyor and disposed of during shutdown. The chuck apparatus main body member 10 of Carl, which the Office Action interprets as a shield, is not disclosed as being removably held on a conveyor, let alone capable of being disposed of during a shutdown. As above, White does not cure this deficiency. Thus, the combination fails to teach all of the claim limitations recited in at least claim 16. Reversal of the rejection is respectfully requested. Claim 20 depends from claim 16 and is submitted as being allowable for at least the same reasons.

C. The Rejection of Claims 5, 7, 13, and 14 Under 35 U.S.C. § 103(a)

On pages 5-6 of the Office Action, claims 5, 7, 13, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Carl in view of White, and further in view of the purported Admitted Prior Art. The Appellant respectfully traverses the rejections, and hereby appeals the same.

Claim 13

Independent claim 13 recites steps similar to the method of claim 1, including the shields being made from scraps of the first material produced from the making of the containers. Accordingly, the Appellant respectfully traverses and appeals the rejection of claim 13 for at least the reasons set forth above with regard to claim 1. Reversal of the rejection is respectfully requested. Claims 14 and 18 depend from claim 13 and are submitted as being allowable for at least the same reasons.

VIII. CONCLUSION

In view of the foregoing arguments, the Appellant respectfully requests reversal of the

Examiner's rejections of claims 17-20 under 35 U.S.C. § 112, first paragraph. Because claims 17-20 have not been rejected as being anticipated by or unpatentable over any prior art, Appellant respectfully submits that these claims are allowable. The Appellant further respectfully requests reversal of the Examiner's rejection of claims 1-4, 6, 8-11, 15, and 16 under 35 U.S.C. § 103(a). The Appellant further respectfully requests reversal of the Examiner's rejection of claims 5, 7, 13, and 14 under 35 U.S.C. § 103(a).

Respectfully submitted,



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IX. CLAIMS APPENDIX - 37 C.F.R. § 41.37(c)(1)(viii)

Appealed Claims:

1. A method of protecting portions of containers from being coated while other portions of the containers are being coated, comprising:
 - making containers from a first material;
 - coating the containers with a second material; and
 - prior to coating, covering portions of the containers to remain uncoated with shields of the first material,
 - wherein the shields are made from scraps of the first material produced from the making of the containers.
2. The method of claim 1, wherein the containers are bottles.
3. The method of claim 2, wherein the portions of the bottles to be protected from coating are the portions of the bottles that will contact bottle closures.
4. The method of claim 1, wherein the first material is polyethylene terephthalate.
5. The method of claim 1, wherein the second material cures to form an oxygen barrier.
6. The method of claim 1, further comprising making the shields by injection molding.

7. The method of claim 1, wherein the shields contact the containers, and the containers are electrostatically charged to attract the second material.
8. The method of claim 1, wherein the containers are coated with the second material by spraying.
9. The method of claim 1, wherein the containers are releasably supported on a conveyor during coating and removed from the conveyor after coating, and the shields are connected to the conveyor during and after the coating.
10. The method of claim 9, wherein shields are removably held on the conveyor by a friction fit.
11. The method of claim 10, wherein the conveyor is shut down periodically for maintenance, and the shields are removed from the conveyor and disposed of during the shutdown.
12. *(Canceled)*
13. A method of protecting portions of containers from being coated while other portions of the containers are being coated, comprising:
making containers from a first material;

coating the containers with a second material;
prior to coating, covering portions of the containers to remain uncoated with shields made from scraps of the first material produced from the making of the containers, wherein the shields contact the containers, the containers are electrostatically charged to attract the second material, and the containers are made from polyethylene terephthalate.

14. The method of claim 13, wherein containers are coated with the second material by spraying.

15. A method of protecting portions of containers from being coated while other portions of the containers are being coated, comprising:

making containers from a first material;
coating the containers with a second material;
prior to coating, covering portions of the containers to remain uncoated with shields made from scraps of the first material produced from the making of the containers, wherein the containers are releasably supported on a conveyor during coating and removed from the conveyor after coating, the shields are connected to the conveyor during and after the coating, and the shields are removably held on the conveyor by a friction fit.

16. A method of protecting portions of containers from being coated while other portions of the containers are being coated, comprising:

making containers from a first material;
coating the containers with a second material;
prior to coating, covering portions of the containers to remain uncoated with
shields made from scraps of the first material produced from the making of the containers,
wherein the containers are releasably supported on a conveyor during coating
and removed from the conveyor after coating, the shields are connected to the conveyor
during and after the coating, the conveyor is shut down periodically for maintenance, and the
shields are removed from the conveyor and disposed of during the shutdown.

17. The method of claim 1, wherein the shields do not hold a threaded engagement
portion of a finish of the containers.

18. The method of claim 13, wherein the shields do not hold a threaded
engagement portion of a finish of the containers.

19. The method of claim 15, wherein the shields do not hold a threaded
engagement portion of a finish of the containers.

20. The method of claim 16, wherein the shields do not hold a threaded
engagement portion of a finish of the containers

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X. EVIDENCE APPENDIX - 37 C.F.R. § 41.37(c)(1)(ix)
NONE

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XI. RELATED PROCEEDINGS APPENDIX - 37 C.F.R. § 41.37(c)(1)(x)

NONE